

Appendix A
Joint Public Notice and Responses



**US Army Corps
of Engineers.**

Nashville District

Public Notice

Public Notice No. 03-10

Date: March 6, 2003

Application No. 200201957

Please address all comments to:
Regulatory Branch, 3701 Bell Road, Nashville, TN 37214-2660

JOINT PUBLIC NOTICE
**US ARMY CORPS OF ENGINEERS
TENNESSEE VALLEY AUTHORITY
AND
STATE OF TENNESSEE**

SUBJECT: Proposed Improvements to SR-91 Along New and Existing Alignment, in Mountain City, Johnson County, Tennessee

TO ALL CONCERNED: The application described below has been submitted for a Department of the Army (DA) Permit pursuant to **Section 404 of the Clean Water Act (33 U.S.C. 1344)**. Before a permit can be issued, certification must be provided by the State of Tennessee, Division of Water Pollution Control, pursuant to Section 401(a)(1) of the CWA, that applicable water quality standards will not be violated. By copy of this notice, the applicant hereby applies for the required certification.

APPLICANT: Tennessee Department of Transportation
Suite 900, James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243-0334

LOCATION: Along existing alignment from 262' north of West Main Street (SR-34/SR-67) to Sta. 11+110; Along new alignment from Sta. 10+985 to 0.36 mile north of Cole Springs Road (Wills Road), in Mountain City, Johnson County, Tennessee. Construction activities would affect Johnson Hollow Branch, Wills Branch, Drystone Branch, various tributaries, and adjacent wetlands. The proposed work is located on the Mountain City-TN (214-NE) and Laurel Bloomery-TN (213-SE), USGS Quadrangle Maps (Exhibits A and B).

DESCRIPTION: TDOT proposes to construct 4.85 miles of State Route 91 along a new and existing alignment for public use. The construction would consist primarily of four 12' lanes, a 12' turn lane, curb and gutter with 6' sidewalks, or 8' shoulders with 18' typical to ditch centerline. A 12' truck-climbing lane will be incorporated along approximately 1.1 mile of the new alignment, creating a four-lane section.

Construction would result in 4,015' of unmitigated lengths of channel changes, encapsulations, and/or stream losses. The proposal would also result in the permanent filling of 1.38 acres of wetland and the temporary filling of 0.08 acre of wetland for construction and haul roads. A summary of resulting stream and wetland impacts is presented in Tables 1 and 2 (Exhibits F and G). TDOT states that several alignments were considered for the proposed improvement of this section of SR-91. The chosen alternative would safely accommodate present and future traffic volumes. Factors influencing this decision included local economic/industrial development preferences, cost, and fewer relocations of homes and businesses.

The proposed work would result in the deposition of fill material in waters of the United States associated with culvert and bridge construction. These activities are subject to DA authorization. An individual DA permit would be necessary at the location described below:

- Sta. 15+010± Rt. to Sta. 15+220± Lt.: Wetlands and Channel Relocation on Wills Branch, **W-1** and **S-3**. Permanent wetland impact = 1.033 acre; Temporary wetland impact = 0.040 acre; Existing Open Channel = 712'; Proposed Open Channel = 682'; Construction of 183' of 6'x5' box culvert at Sta. 15+187 plus 16' of endwalls; Total Existing = 712'; Total Proposed = 882'. Latitude 36.5179°, Longitude 81.7893° (I404#1). See Exhibits C, D, and E.

The applicant has requested that the Corps of Engineers verify that project activities such as culvert extensions, channel changes, and wetland fills associated with other work locations meet the criteria for authorization under the Nationwide Permit (NWP) Program [January 15, 2002, Federal Register (67 FR 2020)]. These work locations are listed in Tables 1 and 2. In addition to the work locations shown on the tables, two more sites that would involve similar activities are listed below.

- Sta. 10+256± Lt.: Spring off Goose Creek; Box with 31' of 18" concrete pipe. Latitude 36.4774°, Longitude 81.8085° (GARAP #1).

- Sta. 15+295± Lt.: Spring off Wills Branch; Box with 87' of 18" concrete pipe. Latitude 36.5185°, Longitude 81.7895° (GARAP #2).

MITIGATION: As mitigation for the required 4,015' of above construction, TDOT proposes to plant trees along the proposed open channels for a length of 3,075' and along the existing channels for a length of 986' as shown in the enclosed permit sketches. TDOT has requested that the Corps and TDEC grant credit for 1,209' of extra on-site mitigation to be used on future projects in this watershed. As noted above, the project includes the permanent filling of 1.38 acres of wetland and the temporary filling of 0.08 acre of wetland for construction/haul roads. TDOT proposes to mitigate the permanent wetland impacts by debiting 2.76 acres (2:1 ratio) from available wetland credits at the Shady Valley Wetland Mitigation Bank in Johnson County, Tennessee. The temporary wetland impacts would be mitigated by returning the areas to their original elevations, seeding with perennial rye grass, and mulching.

TDOT indicates that the project is not in a Federal Emergency Management Agency (FEMA) floodway, floodplain, or study area. The project is located on the following maps: Johnson County (unincorporated areas) - Panel 100 of 150 (Map # 47023001 OOB), Panel 50 of 150 (Map # 4702300050B), and Johnson County (City of Mountain City, TN) - Map 01 - 05 (Map # 470275B). TDOT states that the roadway design has been accomplished in compliance with the National Flood Insurance Regulations (44 CFR) and consistent with Executive Order 11988 and Federal Highway Administration guidelines 23 CFR 650A.

Representative plans of the proposal are attached to this notice. A complete set of permit drawings/sketches is available for review by contacting J. Ruben Hernandez at (615) 369-7519.

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the work must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the work will be considered

including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b)(1) of the CWA (40 CFR 230). A permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

An Environmental Assessment will be prepared by this office before a final decision concerning issuance or denial of the requested Department of the Army Permit.

TDOT historians have identified three resources along the project corridor that appear to be eligible for the National Register of Historic Places: the Johnson Hollow District, the Wills Historic District, and the Marsh House. The Tennessee Historic Preservation Officer (THPO) indicated to TDOT in a letter dated October 17, 1996, that the project will not affect the Marsh House but will adversely affect the Wills Historic District and the Johnson Hollow District. TDOT historians are currently taking measures to comply with requirements of the law. The National Register of Historic Places has been consulted and no other property listed in or eligible for the National Register is known which would be affected by the proposed work. This review constitutes the full extent of cultural resources investigations unless comment to this notice is received documenting that significant sites or properties exist which may be affected by this work, or that adequately documents that a potential exists for the location of significant sites or properties within the permit area. Copies of this notice are being sent to the office of the THPO.

TDOT received a coordination letter from the U.S. Fish and Wildlife Service (USFWS) dated March 19, 1996, stating that there were no records for federally-listed species of concern in the project area. A Tennessee Department of Environment and Conservation (TDEC) database search performed on March 15, 2002, produced the following listing of state plant species: state endangered Skunk Cabbage (*Symplocarpus foetidus*) and state threatened Crested shield-fern (*Dryopteris cristata*). The database search concluded that recent field studies confirmed the absence of these plant species within the project right-of-way. Therefore, no affect is anticipated to these species. Based on available information, the proposed work will not destroy or endanger any federally-listed threatened or endangered species or their critical habitats, as identified under the Endangered Species Act, and, therefore, initiation of formal consultation procedures with the U.S. Fish and Wildlife Service is not planned at this time.

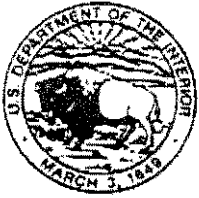
Other federal, state, and/or local approvals required for the proposed work are as follows:

a. Tennessee Valley Authority (TVA) approval under Section 26a of the TVA Act. In addition to other provisions of its approval, TVA would require the applicant to employ best management practices to control erosion and sedimentation, as necessary, to prevent adverse aquatic impacts.

b. Water quality certification from the State of Tennessee in accordance with Section 401(a)(1) of the Clean Water Act.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

Written statements received in this office on or before April 5, 2003, will become a part of the record and will be considered in the determination. Any response to this notice should be directed to the Regulatory Branch, Attention: J. Ruben Hernandez, at the above address, telephone (615) 369-7519. It is not necessary to comment separately to TVA since copies of all comments will be sent to that agency and will become part of its record on the proposal. However, if comments are sent to TVA, they should be mailed to Ms. Anne Patrick, Upper Holston Watershed Team, Suite 218, 4105 Fort Henry Drive, Kingsport, Tennessee 37663-2250. Please send your comments relative to the §401 Water Quality Certification to Ms. Jennifer A. Wallens, Tennessee Division of Water Pollution Control, 7th Floor, L&C Annex, 401 Church Street Nashville, Tennessee 37243-1534, telephone (615) 532-0625.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

446 Neal Street
Cookeville, TN 38501

April 4, 2003

Lt. Colonel Steven W. Gay
District Engineer
U.S. Army Corps of Engineers
3701 Bell Road
Nashville, Tennessee 37217

Attention: Ruben Hernandez, Regulatory Branch

Subject: Public Notice No. 03-10. Proposed improvements to SR-91 from 262 feet north of SR-34/SR-67 to 0.36 mile north of Cole Springs Road. Application by Tennessee Department of Transportation to impact 4,015 feet of stream and 1.38 acres of wetland, Johnson Hollow Branch, Wills Branch, and Drystone Branch watersheds, Johnson County, Tennessee.

Dear Colonel Gay:

Fish and Wildlife Service (Service) personnel have reviewed the subject public notice. The applicant proposes to fill, encapsulate, and/or relocate 4,015 feet of streams. Approximately one and one-third acres of wetlands would also be filled. On-site tree planting has been proposed as mitigation for stream impacts, and 2.76 credits would be deducted from the Shady Valley Wetland Mitigation Bank to mitigate wetlands impacts. The following constitute the comments of the U.S. Department of the Interior provided in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.) and the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

Details of stream channel construction were not fully described in the subject public notice. Habitat constituents of the new stream channels should duplicate those of the existing channels to be filled. Factors such as riffle/pool ratios, meanders, width/depth ratios, and bank slopes should be discussed with all resource agencies prior to authorization of the proposed work.

The applicant has proposed to plant two rows of native riparian trees to mitigate stream impacts. We recommend that trees be planted on 10-foot centers to establish a 50-foot-wide forested riparian zone where feasible.

AFR 01011

Open-bottom box culverts should be used in order to maximize the presence of gravel and cobble in the stream at the project sites and their use by biota. If this is not feasible, the upper surface of the base of the culverts should be buried a minimum of six inches in the stream substrate.

The replacement of stream functional losses is particularly difficult. We are not aware of any stream creation or restoration project in Tennessee that has resulted in comprehensive replacement of all aquatic resource functions. Tree plantings, properly executed, would only replace one of several stream/riparian habitat parameters. Considering the present level of technology in mitigating stream impacts, we view the creation of "extra on-site mitigation" as infeasible at this point.

In summary, we have three main concerns. Stream channels to be used as mitigation should duplicate local natural (i.e., non-disturbed) channels; adequate forested, riparian zones should be established; and natural substrate at culvert sites should be ensured. If stream functions cannot be completely replaced nearby, other means of mitigation (e.g., in-lieu-fee payment at a rate of \$200 per foot of stream encapsulation or filling) should be considered. The Service position is that the subject work should not be authorized before these issues are adequately addressed.

Thank you for this opportunity to provide input. Please contact David Pelren of my staff at 931/528-6481 (ext. 204) if you have questions about these comments.

Sincerely,



Lee A. Barclay, Ph.D.
Field Supervisor

xc: Tom Welborn, USEPA, Atlanta, GA
Dan Sherry, TWRA, Nashville, TN
Dan Eagar, TDEC, Nashville, TN



March 24, 2003

TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

Mr. J. Ruben Hernandez
Nashville District/Corps of Engineers
3701 Bell Road
Nashville, Tennessee, 37214-2660

RE: COE-N, PN# 03-10/SR-91 IMPROVEMENTS, MOUNTAIN CITY, JOHNSON COUNTY

Dear Mr. Hernandez:

In response to your request, received on Friday, March 14, 2003, we have reviewed the documents you submitted regarding your proposed undertaking. Our review of and comment on your proposed undertaking are among the requirements of Section 106 of the National Historic Preservation Act. This Act requires federal agencies or applicant for federal assistance to consult with the appropriate State Historic Preservation Office before they carry out their proposed undertakings. The Advisory Council on Historic Preservation has codified procedures for carrying out Section 106 review in 36 CFR 800. You may wish to familiarize yourself with these procedures (Federal Register, December 12, 2000, pages 77698-77739) if you are unsure about the Section 106 process.

Considering available information, we find that the project as currently proposed MAY ADVERSELY AFFECT PROPERTIES THAT ARE ELIGIBLE FOR LISTING IN THE NATIONAL REGISTER OF HISTORIC PLACES. You should now begin immediate consultation with our office. Please direct questions and comments to Joe Garrison (615) 532-1550-103. We appreciate your cooperation.

Sincerely,

Herbert L. Harper
Executive Director and
Deputy State Historic
Preservation Officer

HLH/jyg

JOE W. McCALEB**Attorney at Law****315 West Main Street, Suite 112
Hendersonville, TN 37075****Office (615) 826-7245****Office (615) 826-7823****Fax/Office (615) 824-1068****E-mail Jeremyah@bellsouth.net**

March 9, 2004

Facsimile and USPS

J. Bennett Graham, Manager
Cultural Resources
Tennessee Valley Authority
PO Box 1589
Norris, TN 37828-1589

Re: Proposed Tenn. State Rte. 91 Realignment
Johnson County, TN

Dear Mr. Graham:

This letter is written on behalf of Ms. Becky Johnson and her father, Charles E. Johnson, both of who are direct descendants of Gustavus Alfred Johnson. The current owner of the G. Alfred Johnson 113.53-acre farm is Rebecca Johnson Reece, Alfred Johnson's granddaughter. Charles E. Johnson is Alfred Johnson's great grandson and Becky Johnson is his great, great granddaughter. Both Charles E. Johnson and his daughter, Becky Johnson are representatives of Rebecca Johnson Reece with legal authority to act for her.

Additionally, this family also owns the Johnson/Wagner Farm and the Smokehouse and Wagner Lime Kiln located on the property inside the Johnson Hollow Historic District and identified in TDOT records as JN 1817, JN 1818 and JN 1495 (Historical and Architectural Survey, Sept. 1996).

In December 2003 and January 2004, Ms. Becky Johnson, (Ms. Johnson) writing on behalf of herself and her father, requested formal concurring party status in the Section 106 process (NHPA). TVA granted consulting party status in a letter dated February 9, 2004.

TVA has not responded to the request that Ms. Johnson have concurring party status in the new MOA being prepared by TVA pursuant to authority granted in 36 CFR 800.6. We hereby renew her request for concurring party status in addition to consulting party status. As you know, the stated purpose of s 800.6 is "to develop and evaluate alternatives or modifications to the

undertaking that could avoid, minimize, or mitigate adverse effects on historic properties." Ms. Johnson and her father wish to have direct input into that MOA and become signatories to it.

History

In preparation for writing this letter on behalf of Charles E. Johnson and Becky Johnson, I have requested and reviewed approximately 218 pages of records from the Tennessee Dept. of Transportation (TDOT). It is quite apparent that as early as August 6, 1996, TDOT had knowledge that this highway realignment as proposed (Alt. D) would have direct and irreversible impacts not only on the Johnson Hollow Historic District, but also on individual farms that lay within the District. (See enclosed letter from Martha Carver to Glenn Beckworth dated August 6, 1996, Exhibit 1) In a letter dated November 4, 1996, the Tennessee Historical Commission advised TDOT that the proposed undertaking would "adversely affect two significant cultural resources", including the Johnson Hollow Historic District. (Exhibit 2, attached) I do not have the exact date that the contract was let by TDOT to begin construction of the realignment, however, the Alfred Johnson farm became listed on the National Register in 1998, at least four years prior to the contract being let. Moreover, TDOT became aware of the Farm's listing on the National Register at a ROW hearing on November 2, 1999, and confirmed in writing on November 8, 1999. (See Exhibit 3, attached). Note in the letter, the state agency characterizes the proposed realignment as "minimal to this issue".

It is not disputed that construction entered the Johnson Hollow Historic District and entered the Alfred Johnson Farm without any Section 106 process having been initiated and once initiated, no effort was made to invite private consulting or concurring parties. It is also undisputed that the construction resulted in the complete demolition of a 1910 Tenant house on the Alfred Johnson Farm (JN 1867, Historical and Architectural Survey prepared for TDOT, September 1996) two cattle ponds and historical fence lines (noted in the National Register documentation), all located on the Alfred Johnson Farm. As you know, that is in direct violation of the NHPA and the Section 106 process.

Today, construction is stopped but there remains on the Alfred Johnson Farm a 40-foot high fill for the proposed highway. Of course, such "improvement" is totally out of character for this historical farm and if allowed to remain, it will likely cause this farm to be removed from the NR. Removal of the Alfred Johnson Farm from the National Register due to imposition of a highway realignment is NOT an acceptable resolution of adverse effects contemplated in s 800.6; nor is it acceptable to the Johnson family. This condition is particularly egregious because prior to letting the bid for the contract, the TDOT Historical Preservation staff knew about the significant historical and cultural resource presented by this Farm and Historic District as did other Divisions within the state agency, namely the Planning Division and the Region 1 ROW office. Yet, TDOT approved Alt D anyway, citing local political support and encouragement. [See

Documentation of Effects, Proposed Improvements to State Route 91, Mountain City, Johnson County, prepared by TDOT, Environmental Planning Office, October 1996, Attachment 3, acknowledging adverse effects to the Johnson Hollow Historic District and citing pre-2000 regulations at s 800.9, currently found at s 800.5]

Comments

Removal of this property from the National Register resulting from the actions of a state agency with knowledge of the affects of its actions amounts to an unlawful taking.

The proposed landscaping plan presented by TDOT, as mitigation, is unacceptable. Planting trees along either side of the realignment project does nothing to "avoid, minimize or mitigate" the visual and sound effects of this proposed highway on pastoral historic properties. Particularly is this the case with the Alfred Johnson Farm where the proposed roadbed is elevated 40 feet in the air, some historical structures already destroyed and the Historic farm cut in half.

In view of the following facts: 1) that no one in the Johnson family was consulted or invited to consult about the temporary and permanent adverse impacts to the Alfred Johnson Farm prior to construction beginning; 2) that no official Section 106 process was begun and once begun, done improperly prior to allowing destruction of Registered historical properties; 3) that the state agency in charge knew the proposed highway would require federal permits from TVA and the Army Corps of Engineers but chose to begin construction without obtaining those permits and otherwise complying with federal regulations like the NHPA and section 106; 4) that TVA's invitation to Ms. Johnson to consult on the resolution of known adverse impacts to her family's registered historic properties presents a first opportunity; and 5) that the proposed highway realignment through the Alfred Johnson Farm has just begun, Ms. Johnson and her father, Charles E. Johnson propose the following in an effort "to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties." [s 800.6(a)]

A. Shift state 91 realignment off the Alfred Johnson Farm entirely, moving the alignment northeast and crossing the Johnson Hollow Historic District boundary nearer to the Johnson/Wagner Farm identified in TDOT's documentation as properties JN 1817, 1818 and 1495. These properties are also owned by the Johnson family but not listed on the National Register. (See TDOT's Documentation of Effects, supra, Attachment 3, p. 3, for the location of this property to the Alfred Johnson Farm identified as JN 576, and the proposed highway)

B. Remove the 40-foot high fill on the Alfred Johnson Farm and grade back to original contour; restore the two cattle ponds destroyed; and compensate the Johnson family for destruction of the 1910 Tenant house.

C. This proposed new alignment would not change the impact to the Johnson Hollow Historic District, but it would significantly lessen the impact to the Alfred Johnson Farm and save its historic and cultural character; and it will meet the stated goals of 36 CFR s 800.6.

Conclusion

These comments are being made in response to TVA's letter of February 9, 2004, and supplementary to the earlier comments made by Ms. Becky Johnson to TVA and the Advisory Council in separate correspondence dated January 20, 2004. We reserve our rights to consult further with TVA and other consulting parties, to make additional comments and otherwise participate in the process.

Respectfully,

JOE W. McCALEB

cc: Becky Johnson
Charles E. Johnson
Edward H. Cole, TDOT
Martha Carver, TDOT
Joe Garrison, THC
Tom McCulloch, ACHP
J.Ruben Hernandez, USACOE

J. Bennett Graham
Manager of Cultural Resources, TVA
PO Box 1589
Norris, TN 37828

Becky Johnson
152 Marshall Street
Waynesville, NC 28786
828-507-9141 (home)
828-452-4251 (work)
828-452-3585 (fax)

To Bennett Graham, TVA cultural resources manager:

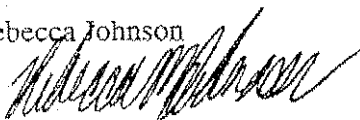
The Johnson family is requesting concurring party status in the Section 106 review of the S.R. 91 undertaking in Johnson County. I understand a memorandum of agreement has been drafted to mitigate the adverse effects of the undertaking on the Alfred Johnson Historic Farm, which is listed on the National Register of Historic Places. As caretakers of the historic farm and representative of the property owner Rebecca Johnson Reece, I am requesting concurring party status on this memorandum.

We believe the Tennessee Department of Transportation has illegally initiated construction of S.R. 91 across the historic property. The premature construction of the undertaking prior to completion of Section 106 review has restricted the consideration of alternatives to avoid, minimize or mitigate the adverse effects to the historic property.

In addition, we are requesting a stop work order be issued on this undertaking. It is our understanding a second contract has been let on the project and is slated to proceed in coming weeks.

Please let us know of our status as a concurring party on this matter as soon as possible.
Thank you,

Rebecca Johnson



cc: Charles Johnson, power of attorney
Rebecca Johnson Reece, property owner
Judy Steel, community relations division T-DOT
Reuben Hernandez, Army Corps of Engineers

Jan. 9. 2003

Becky Johnson
152 East Marshall Street
Waynesville, NC 28786
828-507-9141 (phone)
828-452-3585 (fax)

To Bennett Graham, TVA cultural resource specialist:

I am requesting that TVA not issue a federal permit for the S.R. 91 road project in Johnson County, Tennessee, until Section 106 concerns are properly addressed according to federal requirements.

In addition, I am requesting that TVA not sign the Memorandum of Agreement that has been drafted in reference to the undertaking's impacts to federally recognized historic property and proposed mitigation for those impacts.

According to Sec. 800.9(c) (1) of Section 106 of the National Historic Preservation Act a federal agency is prohibited from granting permit "to an applicant who, with intent to avoid the requirement of section 106, has intentionally significantly adversely effected a historic property...". We believe that the Tennessee Department of Transportation qualifies as such an applicant.

The Tennessee Department of Transportation has illegally initiated construction across the Alfred Johnson Historic Farm prior to Section 106 review, and as a result, has severely limited appropriate mitigation for adverse impacts from being considered.

A draft Memorandum of Agreement has been signed by Martha Carver representing T-DOT and Jo Garrison representing TN-SHPO. However it contains many falsehoods and inaccuracies.

- The draft MOA states that the Johnson Hollow Historic District is "eligible for the National Register." In fact, the property is listed on the National Register as the Alfred Johnson Historic Farm.
- The draft MOA states that "no historic structures will be taken." In fact, a dwelling listed on the National Register as a vital component of the historical agricultural complex has been demolished.
- The draft MOA states the project "will require taking land" and that the TDOT "will build." This language is extremely misleading considering that the construction of the undertaking across historic property has already been initiated.

In addition to the illegal destruction of historic property prior to Section 106 compliance, there were several violations to the Section 106 process once it was initiated in March 2003. Those violations include but are not limited to:

- No attempt was made to identify consulting parties. 800.3(f)
- No plan was made to involve the public. 800.3(e)
- No public notice was provided about the "undertaking and its effects on historic properties" in order to "seek public comment and input." 800.2 (d) 2)
- No public notice was provided seeking comment on "resolving adverse effects of the undertaking." 800.6(a)(4)
- Inadequate identification of adverse impacts to the historic property, including impacts that would diminish the property's integrity, such as setting, audible impacts, character, the property's use and other contributing physical features. 800.5(a)(1)
- Inadequate consideration of "alternatives or modifications to the project that could avoid, minimize, or mitigate adverse effects." Prior initiation of the undertaking "subsequently restricted" such considerations. 800. 6(a) and 800.1 (c)
- Inadequate identification of historic properties. 800.4 (*see foot note)

The Johnson Family is requesting that Section 106 review be reinitiated from the beginning of the process, with the Johnson Family being included as a concurring party.

Sincerely,

Becky Johnson,
elected representative of the Johnson Family and property owner, Rebecca Johnson
Reece

* While the Section 106 review identified the "Johnson Hollow Historic District," there is no reference in any Section 106 documentation to the Alfred Johnson Farm being listed on the National Register of Historic Places. It appears that neither TDOT's cultural resource specialist Martha Carver nor the TN-SHPO officer Jo Garrison were aware that the property was and is listed on the National Register. Further, TDOT construction engineers and contractors assigned to carry out the project stated they were unaware that the property was listed on the National Register of Historic Places until nine months after construction on the property first commenced.

Cc:

Martha Carver, T-DOT cultural resource specialist
Jo Garrison, TN-SHPO
Reuben Hernandez, Army Corp of Engineers
Tom McColloch, Advisory Council for Historic Preservation
Judy Steel, T-DOT community relations specialist

JOE W. McCALEB

Attorney at Law

315 West Main Street, Suite 112
Hendersonville, TN 37075

Office (615) 826-7245

Office (615) 826-7823

Fax/Office (615) 824-1068

E-mail Jeremyah@bellsouth.net

April 7, 2004

J. Bennett Graham
Cultural Resources Mgr.
TVA
PO Box 1589
Norris, TN 37828-1589

Re: Proposed Realignment of SR 91, Mountain City,
Johnson County, Tennessee

Dear Mr. Graham:

This letter is written on behalf of my clients and in response to the letter to you from Martha Carver, TDOT, dated March 31, 2004.

A. First, clearly T-DOT initiated construction prior to Section 106 review. All the documentation cited by Ms. Carver - from Public Law 699 to the national register documentation — may have existed in a file somewhere, but that does not satisfy Section 106.

Section 106 specifically requires that mitigation for impacts to historic property are developed in a public process PRIOR to construction. This did not happen. Significant construction activity across historic property and resulting, irreversible damage to the historic property occurred PRIOR to the Section 106 process being initiated in March 2003. Once initiated, no public announcements were made about the process. None of the members of the Johnson family were invited as consulting parties until Becky Johnson purposely requested concurring party status. In TDOT records reviewed by this attorney, emails and memos exist by and between Ms. Carver and Joe Garrison discussing whether to invite Becky Johnson as a consulting party.

To this day, TVA has not denied or granted concurring party status, but has granted consulting party status.

An MOA was not drafted for six months after construction had begun on the historic property, and once drafted, it contained many inaccuracies about the

nature and status on the project. Again, Section 106 requires an MOA be drafted PRIOR to construction across the historic property. This did not happen.

One is easily left with no other conclusion but that TDOT purposefully attempted to circumvent the Section 106 and MOA process by proceeding with construction prior to obtaining proper federal permits.

While members of the Johnson family, namely Rebecca Johnson Reece and Becky Johnson, participated in 1996 public hearings in conjunction with the state's feasibility study, such participation does not suffice for the public participation and announcements required for the Section 106 process occurring seven years later. Nor do the comments of Rebecca Reece in 1996 suffice for the required identification of consulting parties. The Johnson family was never contacted about the Section 106 process once it was belatedly initiated until Becky Johnson asserted herself. The family had previously expressed concerns over the impacts to their historic property, so the family could have been easily identified. However, no public notices about the Section 106 process were issued, in clear violation of the NHPA and Section 106.

B. Regarding a realignment shift, Ms. Carver indicates in her letter that Ms. Rebecca Johnson Reece met with "TDOT representatives to discuss possible alignment shifts". (Carver letter, pg. 2, parag. 2) In my earlier letter to you, I made another offer on behalf of the Johnson family to shift the entire highway alignment more to the northeast and cross the Johnson/Waggoner farm. That farm is not already registered on the List of National Historic Places; it is not a working farm as is the Alfred Johnson Farm, nor is it in the pristine original condition with completely intact surrounding outbuildings that is exhibited by the Alfred Johnson Farm. To suggest the properties are of comparable historical value simply because one is registered and the other is eligible for registration shows a clear lack of knowledge and understanding about the properties in the area and the impact of the project on those properties. It also shows a clear non-caring attitude for registered historical properties.

The Johnson family owns both of the properties, and the offer was made with their consent.

It has never been demonstrated by TDOT that it ever made any attempt to comply with the Rebecca Reece's request to have the road moved away from the historic structures and the heart of the historic farm. In fact, early maps of the proposed alignment included in the 1996 feasibility study and the P.L. 699 surveys show the road passing to the east of the 1910 tenant house. It is not until 1998 that later maps first show the road going over the top of the tenant house, indicating the road was actually shifted TOWARD, not away, from the Johnson property.

TDOT claims loudly that it looked at all "reasonable alternatives". Well, it did not consider the one referenced above and outlined in my earlier letter. Nor did it consider another alternative which would route the proposed realignment around the Johnson Hollow District and impair NO wetlands and NO historic properties, possibly costing less to build.

Such an alignment would begin where the current alignment departs from U.S. 421 and ascends to the ridgeline above the Alfred Johnson farm. But then, instead of descending from the ridgeline and crossing the Johnson Farm, the road should instead continue following the ridgeline above the Alfred Johnson Farm, above the Tommy Johnson farm and above the Wagoner farm before dropping down to meet Highway 91 at the intersection where Johnson Hollow meets Highway 91. (Mountain City and Laurel Bloomary Quads)

Instead of building 4.5 miles of new road, the state would have to build approximately 2 miles of new road. This option would likely be cheaper. It would avoid the two endangered species discovered in the wetlands. It would avoid stream relocations and stream culverts requiring extensive TVA and USACOE permits. It would completely avoid the Wills historic district. It would also avoid impacts to the Johnson historic district. Historic Appalachian settlement, farming practices, dwellings and structures were all located on the valley floor. By following the ridgeline, impacts to these structures and farming practices would be avoided. The ridgeline is a gentle, wide ridge and very easy for a road to follow.

The TDOT, however, never examined this alignment. It would in fact be less expensive, less destructive and still fulfill the objectives of the new alignment. By not examining this very obvious alignment, TDOT did not properly consider alternatives to mitigate, avoid or minimize negative impacts to the historic property.

In addition to the Johnson Hollow crossing, the only other alignments that were seriously considered went directly through downtown. Three alignments fall within this category, but all follow the same route through downtown before branching off at the terminus. However, these alignments follow the same route through town for the majority of the project, and would have required numerous relocations of residents due to widening, and therefore generated public opposition.

A cursory look was also given to one other alignment that proceeded further north on U.S. 421 before departing from the highway and cutting east along new alignment to Highway 91, but was a very round-about, lengthy route and therefore not feasible.

Thus, given limited alignments to consider, the TDOT successfully pigeon-holed an unaware public into "supporting" the Johnson Hollow alignment.

C. In response to the right-of-way settlement between the state of Tennessee and Rebecca Johnson Reece, it must not go unnoticed that the monetary sum paid to Ms. Reece covered the real value of the property, the fences and the structure that were taken. That sum compensated Rebecca Reece for the lost acreage, but did NOT address mitigation for the negative impacts to the remaining historical property.

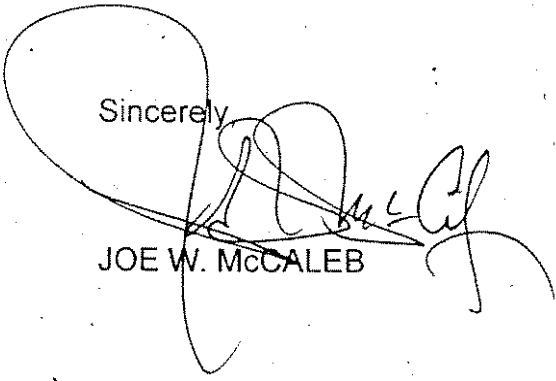
According to our reading of Section 106, TDOT must carry out appropriate mitigation for the negative impacts to the historical value and characteristics of the property. A right-of-way settlement based on a real estate appraisal of taken land in no way mitigates for the negative impacts to the historical property. This is not the spirit or intent of Section 106. Section 106 does not state nor imply that paying a property owner fair market value for the acreage taken by the government equates or counts toward mitigation. Particularly is this true in this situation where this highway, if built, would likely remove the farm completely from the List.

Moreover, Ms. Reece is a frail elderly woman, unmarried, and who felt intimidated by the state and local officials. While she did not want to settle or give up her land, as noted by Ms. Carver in her letter, Ms. Reece felt she had no choice. She was told at a road meeting by TDOT representatives, in the presence of witnesses, that if she didn't settle, the state would take her land anyway, she would get less than what the state was currently offering, and it would be some years before she got that. Such talk is not only contrary to Tennessee law, it's also unethical. Ms. Reece, however, believed what she was told.

D. In reference to the second destroyed cattle pond of which Ms. Carver claims no knowledge, that pond was destroyed by the volumes of flood waters and erosion and sedimentation from the path of the road already built. That destruction was made without lawful authority and is reported to the USACOE and TDEC in my letter of this same date, copy to Ms. Carver. Should Ms. Carver visit the property in question, during the onsite visit and inspection I requested in my earlier letter, she will witness that destruction.

This concludes my response to Ms. Carver's letter of March 31, 2004. On behalf of the Johnson family, we renew our request for an onsite inspection by all consulting parties; and we renew our request that the Johnson family be allowed concurring party status in any MOA that may result from these proceedings. Further, we strongly encourage TVA, TDOT and ACHP to seek an alternative that will allow the highway to be realigned without destroying national historic properties and structures. We believe such a cooperative effort has not been adequately explored.

Sincerely,


JOE W. McCALEB

Cc: Martha Carver, TDOT
Edward Cole, TDOT
John Reinbold, TDOT
Joe Garrison, THC
Tom McCulloch, ACHP
J. Ruben Hernandez, USACOE

JOE W. McCALEB

Attorney at Law

315 West Main Street, Suite 112
Hendersonville, TN 37075

Office (615) 826-7245
Office (615) 826-7823
Fax/Office (615) 824-1068
E-mail Jeremyah@bellsouth.net

April 7, 2004

Mr. J. Ruben Hernandez
USACOE, Nashville District
Regulatory Branch
3701 Bell Road
Nashville, TN 37214-2660

RE: Corps file # 200201957
TDOT Project # 46045-1201-04
Federal Project # STP-EN-34(28)
PIN 100939.00
State Route 91, Johnson County
From US 421 to N. of Cole Sprgs Rd.

Dear Ruben:

I appreciate the status update you provided me yesterday regarding the application for DA and other permits. The comments below relate to the Public Notice (PN) dated March 6, 2003 and events that have occurred since the date of the Notice. A copy of this correspondence is being mailed to TDOT, TDEC and TVA.

I represent members of the Johnson family who own property in the Johnson Historic District and specifically the Alfred Johnson home place and farm listed on the National Historic Register, which this proposed hwy project will desecrate. Corps procedures found a 33 CFR Part 325, Appx. C, as well as others, as amended, apply.

As indicated on the PN, the streams affected are: Johnson Hollow Branch, Wills Branch and Drystone Branch and various tribs. Also the PN confirms that this project results in 4,015 ft of unmitigated channel changes, encapsulations and stream losses. Additionally, nearly 1.5 acres of natural jurisdictional wetlands will be either permanently loss or impacted. (See TDOT letter to Ron Gatlin, dated November 18, 2002 for detailed losses and stream encapsulations)

According to the summary charts in the PN, exhibit F, 830 ft. of natural stream channel will be lost and another 486 ft of stream channel not

encapsulated, will be encapsulated. The mitigation proposed by TDOT is not sufficient to account for these losses, not taking into account the destructive impact on National Historic properties discussed later. The letter to Ron Gatlin, aforementioned, requests the Corps to concur "that the resources cited fall outside your defined Area of Potential Effect (APE) for the resources requiring permits". According to Corps regulation cited above, that request cannot be accommodated.

Before getting to specifics, I call your attention to TDOT's proposed mitigation for the loss of 4,015 ft of unmitigated channel changes, encapsulations and stream, page 3, letter to Ron Gatlin. TDOT claims it will plant trees as shown in the enclosed permit sketches. However, these "sketches" are not accurate as noted in the memorandum from TDOT biologist, Lilah Miller dated July 21, 2003 and enclosed with the letter to Mr. Gatlin. The sketches show rows of trees on both sides of the channels, when in fact only one will be planted and the resulting buffers are not certain. TDOT is more concerned with its proposed ROW widths than with even minimal mitigation. The long term impact of that on temperature of the new channels cannot be determined. Ms. Miller also rejects the request by FWS that encapsulations contain natural or "open- bottoms" where possible. It seems to us merely planting one row of trees along 4,015 ft of new channel is miserably poor mitigation for lost of natural stream channel, especially when it adversely impacts national historic districts.

Additional specific comments and objections to the proposed permits are detailed below in numbered paragraphs.

1. The three streams named in the PN do not appear in TDEC's General Water Quality Criteria and Use Classifications, dated January 2003, although a "Johnson Branch" is shown as a tributary to Laurel Creek. (Holstein River Basin) However, looking at the appropriate topographic maps, Johnson Hollow Br. is a tributary of Goose Creek and Wills Branch and Drystone Branch are tributaries of Laurel Creek. Although the Branches are not shown, both Goose Creek and Laurel Creek are high quality waters and both are shown as "Naturally Reproducing Trout Streams" (NRTS), which means that the tributaries have or should have the same use classification. (Division of WQC regulations) As such, these waters are entitled to special care and TDOT should be required to take special precautions to prevent siltation and erosion from entering these streams.

2. In that regard, you noted yesterday that you have received section 401 certification from TDEC, Division of WQC, in August 2003. However, at the time that certification was given, TDEC, TDOT and several private parties were negotiating a new MOA and Consent Order signed by the Commissioners of both agencies on March 10, 2004. (See enclosed letter from the Attorney General of Tennessee.) The MOA is found on TDEC's web pages and details a new erosion control and sediment prevention plan to be implemented by TDOT and a

statewide storm water management plan. In view of this new MOA and Consent Order, and the fact that no other permits are issued, the Corps has not begun its EA process and everything is on hold pending the Section 106 process, it appears to me that the 401 certification should be revisited and revised if necessary. At this point, the state cannot say with creditability that this project will not violate state water quality standards.

3. In fact, in view of the fact that federal permits have not been issued, nor have state ARAPs, pending the Section 106 process; the new discovery of the bog turtle habitat in part of the jurisdictional wetlands to be filled; the fact that the route as planned shall adversely impact a specific property, the Alfred Johnson Farm listed on the National Historic Register and not disclosed by TDOT in its earlier application and not shown on the Corps PN; and the new MOA signed by both Commissioners on March 10, 2004, less than 30 days ago, the Corps, TVA and TDEC should issued a new Joint Public Notice. The current notice issued more than one year ago does not currently "include sufficient information to give a clear understanding of the nature and magnitude of the activity" proposed; and does not comply with the criteria specified in 33 CFR 325.3 because the project has changed since March 6, 2003, and may change more.

4. The ROW already begun on the Alfred Johnson Farm, BEFORE permits allowed and BEFORE the Section 106 process was begun, has already created mud slides and extensive erosion on this historic property. Specifically, the granary, blacksmith shop and tobacco grading shed have been flooded; mud has been deposited on farming equipment. This historic farm is a working farm, still. A cattle pond located on the farm has been filled in by mud flowing off the project due to inadequate erosion control measures. This pond was listed on the national register as part of the Alford Johnson Farm and its loss has rendered a large pasture unusable because it was the sole source of water used by cattle in the immediate area. Another cattle pond was filled and taken by TDOT as part of the 40 foot fill now located on the property, and no permit was issued for that fill. A water line was relocated underneath Johnson Hollow Branch requiring dredging in the stream in two different places with no notice to state or federal agencies. The 40 foot fill now remaining on the farm together with culverts in place presently directs large volumes of water onto the Alford Johnson Farm and has cost the loss of 10 acres of pasture from March 2003 and the inability to re-establish historic fences. No permits have been applied for by TDOT or issued by permitting agencies for these impacts in violation of state and federal statutes and regulations. Additionally, TDOT has offered no mitigation whatever for these losses.

On the Johnson/Waggoner Farm listed as eligible for the National Register and located further north of the Alfred Johnson Farm, 8 acres of pasture land was lost from March 2003 through November 2003 due to tremendous flooding that resulted in six inches of standing water and soft mud covering the entire

area. Additionally, three feet of mud was deposited the length of the Lime Kiln Hollow over approximately 3 acres, nearly covering a concrete watering trough that previously protruded 3 ½ feet above the ground. Other fields now a mud hole include ½ acre sown in winter wheat or corn. None of the impacts to this eligible historic property have been mitigated nor were proper erosion and sediment structures in place to prevent the damage.

5. Finally, the Joint PN issued on March 6, 2003 proposes to give notice to the public of multiple federal and state permits. That PN is now out of date as noted. Even so, one PN for at least one TVA section 26A permit, one or two section 404 permits, two General ARAP permits and at least eight Individual ARAP permits does not and cannot give adequate notice to the public on the impact of all these permits on the watershed of Creeks and tributaries directly and indirectly impacted. The Corps should be reminded of the recent injunction issued by the Middle District Court relative to the Corps' failure to examine the cumulative impacts from multiple permits issued and planned for the proposed 840 route in Williamson County, Tennessee.

This concludes my comments on the Public Notice issued on March 6, 2003 on behalf of my clients. The Joint Public Notice is out of date and inaccurate and should be reissued or reissued in the form of more than one PN to reflect the current on-the-ground conditions found as a result of TDOT allowing construction to begin without complying with federal and state law; and specifically the Section 106 process, giving the public new and accurate notice of this project and soliciting comments. 33 CFR 325.3 – Public Notice. For all the reasons cited in this comment, the current Section 401 certification by Tennessee should be revoked and reexamined in light of the conditions on the ground and the new MOA; and applications for all other federal and state permits should be DENIED. At the least, TDOT should be required to reapply for permits and give the Corps, TVA and TDEC current on-the-ground information relative to the water impacts anticipated by the this project and thus give the public new and accurate information on which to base comments.

Respectfully,


JOE W. McCALEB

Cc: Edward H. Cole, TDOT
John Reinbold, TDOT
Martha Carver, TDOT
Joe Garrison, THC
Tom McCulloch, ACHP
J. Bennett Graham, TVA
Dan Eager, TDEC

**CHARLES JOHNSON AND BECKY JOHNSON COMMENTS
ON PROPOSED HWY. 91 RE-ALIGNMENT PROJECT
RESULTING FROM THE JOINT MEETING ON JUNE 4, 2004**

1. All comments already made to J. Bennett Graham, Manager, Cultural Resources TVA, by letter from Joe W. McCaleb, Attorney for Charles E. Johnson and daughter, Becky Johnson, (Johnson family) dated March 9, 2004 and April 7, 2004, and copied to other parties, are incorporated and made a part of this statement as if quoted verbatim herein.
2. All comments already made to J. Ruben Hernandez, USACOE, Nashville District, Regulatory Branch, by letter from Joe W. McCaleb, Attorney for the Johnson family dated April 7, 2004, and copied to J. Bennett Graham and other parties on the same date, are incorporated and made a part of this statement as if quoted-verbatim herein.
3. During the meeting on June 4, 2004, and afterwards, during the tour of the Alfred Johnson Farm, Becky Johnson and her father Charles E. Johnson clearly delineated two reasonable alternative routes mentioned before in the above stated correspondence. Neither of these alternative routes were examined by TDOT prior to it deciding on the presently proposed route. The alternative routes were conceptually drawn on a topographical map and distributed to all consulting and concurring parties present.
4. One such route would place the realignment of Hwy. 91 on a ridge line above the Johnson and Wills Historic Districts and not bisect either District, unless TDOT's previously delineated Alternatives A or B were chosen near the end of the project. This proposed route would not require the same number of state ARAP permits, nor require USACOE 404 permits, nor impact a wetland, nor impact any property currently listed or eligible for listing on the National Historic Register.
5. During the tour of the Alfred Johnson historic farm on June 4, 2004, the following TVA personnel were present: Harold Draper, Frank "Bucky" Edmondson, Khurshid Mehta, and Danny Orlinger. Members of no other local, state or federal agency were present. Other persons present were Joe W. McCaleb, attorney for the Johnson family, Charles Johnson and daughter, Becky Johnson.

Numerous and serious erosion channels were observed flowing off cuts already made into the property of the farm, causing the small stream flowing along side Johnson Hollow Rd to be colored brown to orange from siltation entering the stream in violation of Tennessee water quality standards for turbidity or color, taste or odor and probably dissolved oxygen. Although the small tributary appears to be unnamed, it is likely minimally classified for fish and aquatic life, livestock watering, recreation and wildlife and irrigation. (Tennessee General Water Quality Criteria, Chapter 1200-4-3; Use Classifications for Surface

Waters, Chap. 1200-4-4). These conditions were present even though rock check dams were observed in the erosion channels and silt fences were observed, albeit many in a state of disrepair. Violation of water quality standards invalidates the Section 401 certification issued by TDEC in August 2003, and renders it unlawful for the USACE to issue a Section 404 permit.

6. During the tour, TVA representatives present were shown where the present on-the-ground construction by TDOT and/or its contractor for the proposed Hwy 91 has:

- a) caused water to flow down onto the Alfred Johnson Farm, flooding fields used for hay and cattle grazing;
- b) cut through one field and deprived the Johnson family from using the remaining portion of the field, approximately 30 acres in size;
- c) covered and filled one cattle pond under a 40 foot high fill for the road;
- d) directed storm water through culverts under that fill so that it flows directly onto the Johnson farm, rendering fields unusable and flooding Johnson Hollow Rd;
- e) caused water and mud to drain onto the Johnson farm from the wide road cut running through the farm along the existing farm road leading to Dale Carter's home, and filled another cattle pond with at least 6 feet of mud, rendering it completely unusable;
- f) constructed drains and culverts in positions along the existing farm road shared with the Carter family to direct water from the proposed highway directly onto that road and onto the Johnson farm;
- g) changed and re-routed a water line under Johnson Hollow Rd through the small stream without any state permits from TDEC nor approval of the Johnson family;
- h) violated TDEC erosion prevention and sediment control guidelines and regulations causing TDEC to issue Notice of Violations (NOVs), but without any apparent improvements to storm water flow;
- i) completely removed a 1910 tenant house structure without any federal authorization or Johnson family approval; and
- j) materially altered the character and rural setting of the Alfred Johnson Farm as will likely render it no longer eligible to remain on the National Register.

7. In addition to the foregoing impacts to the Farm, all of which (including farm ponds and tenant house) is protected by virtue of its listing on the National Register, TDOT has offered mitigation (only) of planting a series of trees at the base of the 40 foot fill for the road. Such mitigation would not block or even impede the view of the road for at least 30-60 years, (if then) depending on the specie of trees planted, survival rate, weather and insects, etc; nor would such mitigation do anything to impede noise from truck and vehicle traffic on the highway; nor would such mitigation improve or in any way prevent the enormous erosion and flooding of farm fields and cattle ponds which have occurred and are continuing to occur during storm events; nor would such mitigation restore 30 acres of field for active farming now cut off by the 40 foot fill; nor would such

mitigation restore the rural setting and character of the historic farm so that it may remain on the National Register.

8. With regard to these impacts and proposed "mitigation", it is important to note that the Alfred Johnson Farm is a working farm and has been in the continual use as a working farm by the same Johnson family for 125 years, which is a "contributing factor" to its listing on the National Register. Moreover, Section 106 specifically provides that "loss of intended use" is an "adverse impact".
9. In short, the proposed mitigation is totally unacceptable to the Johnson family and rejected by Becky Johnson as the Johnson family representative, shown on the proposed Memorandum of Agreement as a concurring party. Becky Johnson does NOT concur with the proposed mitigation and will not sign the MOA as presently written.
10. No federal or state agency has heretofore offered any route or methodology to avoid or minimize the impacts of the proposed highway re-alignment through and on the Alfred Johnson Farm, although avoidance and minimization are two elements required in the Advisory Council's regulations, specifically, 36 CFR s800.6(a), which reads in part: "The agency official shall consult with the SHPO/THPO and other consulting parties ... to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties."
11. In addition to the Alfred Johnson Farm, TVA representatives were shown another farm owned by the Johnson family known locally as the Johnson/Wagner Farm, which is eligible for listing on the National Historic Register. The Johnson/Wagner Farm is located less than one mile from the Alfred Johnson Farm and is within the Johnson Historic District. Eight (8) acres of pasture land was lost from March 2003 through November 2003 due to tremendous flooding that resulted in six inches of standing water and soft mud covering the entire area. Additionally, three feet of mud was deposited the length of the Lime Kiln Hollow, over approximately 3 acres, nearly covering a concrete watering trough that previously protruded 3 ½ feet above the ground. TVA representatives were shown this Hollow and the concrete trough that is barely visible in the mud. The impacts to this eligible historic property have not been mitigated, nor has any mitigation been offered, nor were proper erosion and sediment structures in place to avoid, minimize or prevent the damage, nor is there any mention of this historically eligible farm in the Memorandum of Agreement.
12. A second alternative has been offered by the Johnson family that would route a portion of re-alignment through this farm, thereby removing the re-alignment through the more valuable and pristine Alfred Johnson Farm.
13. All proposed highway structures on the Alfred Johnson Farm are still under construction; none have been finalized and no concrete has been

permanently installed. No construction work is currently being performed. All the earthen berms, fill and other structures can be removed and graded back to contour. All current threats to the historic structure and character of the farm can be removed, and its integrity restored. The Johnson family offers to return all sums previously paid by TDOT to Rebecca Johnson Reece for ROW easements in exchange for removing the proposed re-alignment of Hwy. 91 off the Alfred Johnson Farm and voiding the ROW deeds.

END OF DOCUMENT

Sincerely,

JOE W. McCALEB

Cc: Martha Carver, TDOT
Edward Cole, TDOT
John Reinbold, TDOT
Joe Garrison, THC
Tom McCulloch, ACHP
J. Ruben Hernandez, USACOE

**CHARLES JOHNSON AND BECKY JOHNSON COMMENTS
ON PROPOSED MEMORANDUM OF AGREEMENT
(revised draft 4/29/04)**

1. Beginning with the second WHEREAS paragraph, first page, TVA states it has determined that the project will have an adverse impact on the historic districts in question, but TVA does not itemize what those impacts are or will be. Nor does the Memorandum of Agreement (MOA) specify what criteria was used to determine the adverse affects as appears to be required in 36 CFR s 800.5.

Additionally, the entire process continues to circumvent the mandates of Section 106 regulations that, in pertinent part, requires the federal agency and TDOT, in this case, to consider and review alternatives to avoid and minimize impacts **before** implementing an MOA, a mandate not complied with in violation of the spirit and letter of the NHPA and its Section 106 regulations. (s 800.6) The statement that (TDOT) "will continue to investigate design options that minimize harm to historic properties" in the MOA to be signed by TDOT is disingenuous and designed to placate rather than comply with established regulations. The Johnson family objects to this language and attempted re-invention of the regulatory process.

2. While the proposed MOA does mention the destruction of historic structures, (6th WHEREAS paragraph) namely the 1910 tenant house, the language in the proposed MOA largely glosses over this issue. The MOA needs to clearly state: "Significant construction activity was initiated prior to the signing of this MOA, prior to completion of federal Section 106 requirements, and prior to the issuance of required federal permits, resulting in significant adverse impacts to the Alfred Johnson Historic Farm." The MOA needs to then state what specific adverse impacts have befallen the historic farm due to the road construction, many of which have been outlined and described in this comment as well as the accompanying comment on the project as a whole.

3. With regard to the tenent house, the National Register documentation for the Alfred Johnson Farm states: "The tenent house was constructed during a period of growing tenency in Tennessee. The tenent house dates to 1910 at a time when share tenents and share croppers comprised a large proportion of the agricultural labor force. The tenent farmers performed all farm duties for the Johnsons, including but not limited to raising and harvesting crops, such as the tobacco alotment, feeding livestock, building and mending fences. Share tenents provided all the essentials for the farm operation except the land itself...One cannot underestimate the contribution of their labor force to the national and international markets."

In some ways, the original and non-altered tenent house that once stood on this farm is more valuable historically than the homeplace. Intact and preserved tenent houses from the era are rare in East Tennessee, as many of the early tenent houses would have been abandon or torn down for better

houses. The occupants of the house had always lived rent free in exchange for serving as farm hands, right up until the day TDOT bulldozed it. The tenant farmers living in this house were always a part of the Johnson family. The school pictures of the tenant farmers' children appear in family photo albums side by side with the Johnson family. The loss of this historic component of the farm is very sad to the Johnson family. SHPO officer Joe Garrison has said that typical mitigation for tearing down a historic structure is architectural documentation of the structure. The structure is already gone. How is that possible? The loss of the tenant house and resulting impact to this important contributing historic characteristic cannot be mitigated, nor minimized. The only option is to avoid.

4. The proposed MOA fails to mention the ponds listed on the National Register of Historic Places as a vital and contributing factor to the historical character of the Alfred Johnson Farm. Two ponds have been destroyed; one by grading activity and one by the lack of sediment prevention and erosion control. The ponds were contributing historic features because they demonstrated the adaptation of settlers to their environment and the evolution of farming practices during the early 20th century. According to National Register documentation, the ponds were created under the Smith Labor Act farm demonstration program, implemented by county agricultural agents as part of the Progressive farm movement of the time. Blue Herrons wintered over on this farm every year. The ponds were home to many frogs that could be heard from the porch of the homeplace at night; and they provided a place for cattle to drink.

The loss of the ponds as important contributing historic characteristics and resulting impacts to the Farm cannot be mitigated, nor minimized. The only option is to avoid.

5. STIPULATIONS:

A.) The proposed MOA does not accurately reflect the status of the undertaking. How has TDOT redesigned the project? What design options has TDOT investigated or examined to avoid or minimize harm to the Alfred Johnson farm; and when? No effort has been made to avoid impacts to the Farm by routing the highway away from the Farm. The landscape plan as presented by TDOT (i.e. planting a series of trees) is completely inadequate and unacceptable and does not minimize visual or noise effects or other impacts to the historic farm. Moreover, any landscape plan occurring on any Johnson family properties or affecting Johnson family properties must be done with the approval of the Johnson family and not presented as a "fait accompli".

B.) As currently proposed, the section of the project located within the Johnson Historic District is 3-lanes, not 2 lanes as shown in the revised MOA draft. (paragraph 1)

C.) The MOA should state with particularity what redesign TDOT has done or will do to avoid or minimize harm to historic properties so TVA and other signatories and concurring parties may know what "measures" TVA is agreeing to ensure. Furthermore, the MOA should reference specifically any redesigned documents prepared by TDOT and make copies available to the Johnson family and other signatories and concurring parties. TDOT, to date, has not provided nor referenced any redesigned documents affecting this project.

D.) A statement that TDOT is building the project on new location because of requests by local officials, is no excuse to totally ignore other routes that would not require the taking of historic properties; nor is it any excuse to alter or avoid the regulatory process laid out in 36 CFR s 800.6, mentioned above. Moreover, there is no NHPA, ACHP, TDOT or TVA regulation to our knowledge that mandates TDOT to consider comments by local officials and politicians of greater weight than the affected owner of historic properties. To do so, is to act arbitrarily and capriciously.

E.) Ten (10) years is an inordinate amount of time to allow a MOA to continue. No such duration is required or suggested in Section 106 regulations [s 800.6(c)(5)]. There is no explanation for an MOA duration to extend 10 years. A more appropriate duration would be no longer than 2 years from the date of execution of the MOA to accommodate changes in local government or state government plans, funding or other reasons not currently known or expected. Additionally, there is no provision in the MOA to accommodate the "subsequent discovery or identification of additional historic properties affected by the undertaking." [s 800.6(c)(6)]. That provision should also be included.

F.) As a final comment, the Johnson family members are direct descendents of Thomas Johnson, the man for whom Johnson County was named. Johnson Hollow was one of the first settled areas in this region of northeastern Tennessee. The proposal of such a severely lacking MOA is insulting and indicates that the federal and state agencies have blatant disregard for historic resources.

The National Register documentation relates what has been a family story passed down among the generations. Rebecca Elrod Johnson, the wife of Alfred Johnson who built the homeplace and started the farm, was forced to sell off portions of the farm to pay taxes after the death of Alfred Johnson left her with nine children to raise and no husband. F.E. Johnson, Alfred's son, swore to his mother he would get the farm back. As relayed in the National Register documentation: "The dedication to the family homestead is exemplified by F.E. Johnson's determinations and Ms. Rebecca Reece's zeal in recounting her father's struggle to keep the farm together. She relates 'My daddy said 'I'll have it back if it lays in my power' and he bought every bit back.'"

G.) Lastly, all comments made in the accompanying document titled: CHARLES JOHNSON AND BECKY JOHNSON COMMENTS ON PROPOSED HWY. 91 RE-ALIGNMENT PROJECT RESULTING FROM THE JOINT MEETING ON JUNE 4, 2004, are hereby

incorporated into this document as comments regarding the impacts to the Alfred Johnson Historic Farm.

END OF DOCUMENT

Sutherland Farms
145 Drystone Branch Road
Mountain City, TN 37683
423-727-7678
18 November 2003

Lilah Miller
Environmental Planning Office
Tennessee Department of Transportation
Suite 900, James K. Polk Bldg.
505 Deaderick Street
Nashville, TN 37243-0334

RE: TDOT Project 46045-2202-04 (or 46045-3203-04)

Ms. Miller,

I am writing you to formally request that the proposed US421-SR91 bypass road be moved out of the springs and wetlands on my property, including the stream terrace springs and wetlands along Wills Branch. I have recently found out how very rare and important these small mountain wetlands are and want to protect them. Five rare plants have been found growing in the wetlands on my property so far. There is also potential habitat for the Federally-threatened Bog Turtle and I want to have a proper search made for it as soon as I can, which will be in the spring of 2004. I am also concerned about the springs in terms of bedrock stability. Were these areas checked for sink holes?

I realize that it is hard to change the road plans this late in the process, but I ask that you move the road up the pasture slope far enough so that I can have a buffer along the stream and wetlands to be able to safely fence the area and continue grazing the land. At least the minimum 50 feet for a soluble nutrient filter strip is needed, but let's discuss moving the road 50-100 yards so that there will be enough pasture between the road and wetlands so that the cows won't have to spend all their time in the wetlands when they are on the west side of the road. Moving up the slope should mean little change in the road on the adjacent properties. This would mean that no destruction is needed at the main wetland and that the only impacts to Wills Branch would be from a crossing, thus almost no wetlands would be impacted.

More specific comments are listed below.

Rare Plants:

Godfrey's Sandwort, State Endangered, Federal Species of Concern, Globally Rare
Skunk Cabbage, State Endangered
Narrow-leaved Meadow Sweet, State Endangered
Branching Bur-reed, State Endangered
Marsh Bellflower, State Threatened Proposed Special Concern

Community Water Supply: The Mountain City area has suffered from water shortages in recent drought years and we need all the water we have for domestic and agricultural use. Altering or outright destroying the wetlands and Wills Branch will make it even harder to keep up with growing water demands both on my farm and in the community. I depend on the water that these permanent springs and streams provide to my farm, and they are crucial when the other water sources dry up. Further, water was pumped from Wills Branch to Silver Lake during recent drought years, thus it is an occasional public water supply that should be protected.

The way the road is currently planned, my pasture will be split into two pieces with one stock pass to provide access to water. The stock pass is too small (1.524 x 1.829 meters) for my 2 bulls to pass each other from opposite directions. It is also too small for my farm equipment and I'm not sure how I'll clean it out when it needs cleaning. From some parts of the pasture the cows will have to go about ¼ of a mile each way to get water where they now only have to go about ¼ of a mile at the most from anywhere in the pasture. Making the cows go to one spot in the stream will obviously have a big impact on the stream and the water quality.

I had earlier asked that TDOT provide me with two wells to compensate for the loss of the water that this road will bring to my farm. If there were wells I could apply for NRCS funds to help me build heavy use pads at the wells. This would greatly reduce the impacts to the stream and the water quality compared to having only the one stock pass available for access to the stream.

Wetlands Maintenance and Restoration: I am told that the rare plants in my wetlands need grazing to keep their habitat open. I am considering applying to the Federal Wetland Reserve Program for a conservation easement to protect the wetlands while at the same time maintaining the habitat for the rare plants that have been found there. If the road fills part of the wetlands or if it does not leave enough buffer, then I may not qualify for the program and the restoration value would be greatly reduced.

Erosion: Erosion has become a problem since the construction was halted. Please see what can be done about it such as re-spreading hay mulch as needed and making sure erosion barriers stay up.

Information Requests:

I have repeatedly asked TDOT to provide me with the land appraisal reports for my property that was condemned. I am asking again for this and related information. What I have heard second and third hand about what my father told TDOT before he passed away does not agree very well with what I remember.

I am also concerned about other potential wetland and stream impacts on other properties along the route. You missed my wetlands and all of the rare plants during the planning process. Please give me assurances that there are not any more along the highway route that were overlooked.

Please give me copies of the Biological / Ecological Analysis and wetlands destruction permits.

Finally, I invite all interested parties and recipients of this letter to visit my property and reach their own conclusions about how far the road should be moved out of the wetland and Wills Branch. Let's keep this an open discussion and consider the alternatives.

Thank you for considering my requests. I look forward to your reply and hope that we can reach a compromise that will help me keep my farm going, protect the wetlands and community water supply, and allow the road construction to continue.

Sincerely,

Bob Sutherland



CC:

Dan Eagar
Tennessee Department of Environment and Conservation
Division of Water Pollution Control
7th floor, L&C Annex
401 Church Street

Nashville, Tennessee 37243-1534

Wade Whittinghill
US Army Corps of Engineers
Nashville District
P.O. Box 1070
Nashville, TN 37202

Lee A. Barclay, Field Supervisor
USFWS Field Office
Cookeville Ecological Services
446 Neal Road
Cookeville, TN 38501

Gabby Call
The Nature Conservancy of Tennessee
2021 21st Avenue South, Suite c400
Nashville, TN 37212

Reggie Reeves
Tennessee Department of Environment and Conservation
Division of Natural Heritage
401 Church Street
14th Floor L&C Tower
Nashville, TN 37243-0447